

FILED

APR 18 2005

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LOURDES GARCIA-GARCIA,

No. C 05-01356 CW

Petitioner,

ORDER OF REMAND

v.

ALBERTO R. GONZALEZ, Attorney
General,

(COA No. 04-73705)
(Agency No. A76-215-392)

Respondent.

On March 31, 2005, The United States Court of Appeals for the Ninth Circuit issued a Mandate transferring the petition for writ of habeas corpus¹ in the above-captioned action to the United States District Court for remand to the Bureau of Immigration Appeals for further proceedings. Accordingly,

IT IS HEREBY ORDERED that the above-captioned petition for habeas corpus is remanded to the Bureau of Immigration Appeals for further proceedings.

Dated

APR 18 2005



CLAUDIA WILKEN
United States District Judge

¹In the interests of justice, the Ninth Circuit Court of Appeals treated the petition for review as a petition for habeas corpus under 28 U.S.C. § 2241.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ORIGINAL

FILED

MAR 31 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

LOURDES GARCIA-GARCIA,

Petitioner,

v.

ALBERTO R. GONZALES*, Attorney
General,

Respondent.

No. 04-73705

Agency No. A76-215-392

FILED

APR - 4 2005

ORDER

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
CAKEATD SF

05-01356-CW

Before: B. FLETCHER, TROTT and PAEZ, Circuit Judges

The Board of Immigration Appeals ("BIA") acted *ultra vires* in issuing an order of removal in the first instance. *See Molina-Camacho v. Ashcroft*, 393 F.3d 937, 939 (9th Cir. 2004). Because the BIA did not remand this matter to the Immigration Judge to issue a removal order, no valid final order of removal exists, and we therefore lack jurisdiction over this petition for review. *See* 8 U.S.C. § 1252; *Molina-Camacho*, 393 F.3d at 942.

* Alberto R. Gonzales is substituted for his predecessor, John Ashcroft, as Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

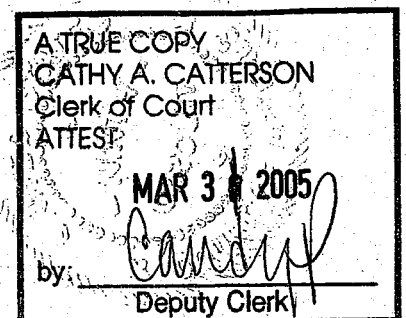
04-73705

In the interests of justice, however, we treat the petition for review as a petition for writ of habeas corpus under 28 U.S.C. § 2241 and transfer the petition to the United States District Court for the Northern District of California. *See* 28 U.S.C. § 1631. Upon transfer, the district court should remand to the agency for further proceedings. *See Molina-Camacho*, 393 F.3d at 942 n.4.

All pending motions are denied as moot.

TRANSFERRED.

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

Garcia-Garcia,

Plaintiff,

v.

Ashcroft et al,

Defendant.

Case Number: CV05-01356 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 18, 2005, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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Dated: April 18, 2005

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk